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November 15,2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12" Street S.W., TW-A325
Washington, DC 20554

RE: CC Docket Nos. 01-338, 96-98 and 98-147. In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers: Implementation of the Local Comuetition Provisions of the Telecommunications Act of 1996: Deplovment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Dortch:

Yesterday, Cronan O'Connell, Mary Retka, Molly Martin and Craig Brown of Qwest Communications International Inc., met with Bill Maher, of the Federal Communications Commission's Wireline Competition Bureau. The material in the attached presentation concerning Triennial Review issues was reviewed. In particular, Qwest discussed its UNE-P Transition Plan, reviewed its Hot Cut Process, and discussed alternative options for local usage and commingling restrictions. Also discussed were general legal and policy issues including state preemption, necessary steps to avoid delays in implementation, and treatment of "de-Listed" UNEs.

In accordance with Section 1.1206(b)(2) of the FCC's Rules, an original and six copies (two for each proceeding) of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. **A** duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

Cronan O'Connell

cc: Bill Maher (via e-mail at bmaher@fcc.gov with attachment)

Attachment

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Triennial Review

November 14, 2002

Triennial Review Key Points

- The Commission must preempt inconsistent state actions
- Unbundled Switching should be removed as a UNE nationally and followed by finite transition plan
- Local Usage and Commingling restrictions should be retained to incent facilities-based competition

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The *Commission Must* Preempt *Inconsistent State* Actions

- As a matter of law, the Commission may not permit states to override its unbundling determinations
  - Section 251(d)(2) requires the Commission to strike a national policy balance in light of the benefits and costs of unbundling
  - Once the Commission strikes that balance, a deviation in either direction would be inconsistent with federal law; in other words, the Commission's unbundling decisions create both a "floor" and a "ceiling"
- *As* a matter of policy, the Commission should not permit states to override its unbundling determinations
  - Alternative would result in patchwork of unbundling rules, governed by state policy differences, protracted litigation, and uncertainty

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The Commission Mωst Preempt Inconsistent State Actions (cont'd)

- Preemptive unbundling policy would be natural extension of *UNE Remand Order*, in light of *USTA* decision
- The Commission's adoption of guidelines or presumptive determinations, with ultimate determinations by the states would be tantamount to complete delegation
- Delegation to states is not necessary to make "granular" unbundling decisions
- Commission must guard against re-regulation of UNEs through section 271

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The Commission Must Take Certain Steps to Avoid Frustration of Its Objectives

- Qwest has encountered significant problems and delays in implementing the Commission's ***ISP Reciprocal Compensation Order***; in many cases, CLECs simply ignored the Order
- Such delays frustrate the Commission's policies and can be'" avoided with certain narrow prescriptions

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Steps to Avoid Delay

- Confirm that obligation to negotiate in good faith applies to both CLECs *and* CLECs
- Make clear that it will permit, and expect, carriers to begin negotiations Immediately, regardless of change of law provision, generally without need for arbitration
- Establish transition period that runs concurrently with change of law process
- Bar CLECs from opting into contracts to perpetuate unbundled access to elements removed from the UNE list

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Unbundled Switching - Key Points

- CLECs are not impaired without access to the Unbundled Switching UNE
- The FCC has authority to mandate nationwide removal of Local Switching as a UNE
- An Order should clearly define the end date for Unbundled Local Switching as a UNE
- A "Customer Acquisition" threshold to transition CLECs from UNE-P will continue to incent inefficient market entry, at the expense of the true facilities-based competitors
  - Does not recognize facilities-based competition
  - Does not recognize intermodal competition
  - Would lead to perpetual, inefficient and, administratively unworkable unbundling requirements

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Qwest UNE-P Transition Proposal

- UNE-P no longer available to serve new customers
  - CLECs may order either Resale or Unbundled Loops subject to the terms of their individual interconnection Agreements
  - Existing UNE-P lines will be "grandfathered" at UNE rates until completion of a transition for these lines
  - Qwest estimates that it will take 7 months to provision all anticipated requests for conversion
- Within 30 days of the date of the FCC Order, Qwest will notify all CLECs via registered letter of their transition options from UNE-P
  - The schedule will identify, by wire center, all planned transition dates and ordering deadlines
  - The CLEC will pay for Hot Cuts consistent with the terms of its interconnection agreement with the ILEC. No volume discounts are available

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Qwest CLEC Coordination Center (QCCC) is Scalable

- QCCC currently staffed to handle 1,500 UNE-L cutovers per day
- QCCC can expand to meet projected demands for UNE-P transition as well as new demand
- **Qwest Hot Cut results today**
  - 99.43% of Analog Coordinated Cuts Completed on Time
  - 98.19% of Digital Coordinated Cuts Completed on Time
- **Standard Provisioning Intervals**

Loop Type		1-8 loops	9-16 loops	17-24 loop	25+ loops
Analog/Voice	Standard Analog Loops	5 days	6 days	7 days	ICB
Grade Loops	Quick Loop Analog-Conversion	3 days	3 days	3 days	ICB

Qwest provides a 3-day installation option, called Quick Loop, for conversion of in-place analog loops that do not require coordinated installation or cooperative testing. Quick Loop is not available for loops served over IDLC technology. Quick Loop is also offered for loops with number portability. The installation intervals for Quick Loop with LNP are 3 days for 1 to 8 loops, 4 days for 9 to 24 loops, and ICB for 25 or more loops.

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Unbundled Transport - Key Points

- The FCC should remove dedicated interoffice transport from the UNE List in areas where it has granted Phase I Pricing Flexibility
- There is no basis to find that competing carriers are impaired without access to Unbundled Transport at TELRIC rates
- Special Access, which is constrained in price, is also a substitute for Unbundled Transport (in addition to alternative providers)
- ***Local use and commingling restrictions should continue to incent facilities-based competition***

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Local Use and Commingling Restrictions

- Today, Qwest's EEL offerings allow viable facilities-based local competition
- Should the Commission, however, determine that the current use restrictions need tu be reviewed, Qwest proposes workable alternatives that:
  - Promote facilities-based local competition
  - Strike a competitive balance for both ILECs and CLECs

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Local Use Restriction Alternatives

Alternatives:	Comments:
Usage Solution:	
#1: CLEC self-certifies that its loops and transport carry at least 51% "local" traffic; and/or	- Applies to all circuits the CLEC wishes to convert to EELs - As is the case today, Internet access will not satisfy the "local" traffic criterion - Audit provisions would apply
Architectural Solutions:	
#2: Local telephone numbers associated with the EEL circuit must be provided to ILEC at time of ordering; and/or	- Audit provisions would apply - Would require CLEC to designate the "26 code" and the CLLI code for the point of interconnection (POI) for the LIS trunk(s) - As is the case today, Internet access will not satisfy the "local" traffic criterion - Audit provisions would apply
#3: CLEC must have local interconnection service (LIS) trunks in place and Percent Local Usage (PLUs) on fils associated with the EEL collocation termination point	- As is the case today, Internet access will not satisfy the "local" traffic criterion - Audit provisions would apply

NOTE: Further investigation of alternatives required. Appropriate solution could be a combination of alternatives

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Local Use Restriction -- Audit Provisions

- As a condition of the purchase of or conversion to EELs, the CLEC must agree to provide traffic billing records to a third party auditor to be identified by the ILEC for review of compliance with the local use certification.
  - The ILEC may initiate an audit by an independent third party to assure compliance with the local use restriction no earlier than 6 months, after this provisioned.
  - Every 6 months, the CLEC must be prepared to provide to third party auditor, if requested, one month's CDR upon 7 day's notice. The audit will include verification that the traffic carried over the facility or facilities in question meets the local usage restriction.
  - The data required for an audit would be the call detail records (CDR) in the Automated Message Accounting (AMA) format from the CLEC local voice switch.
- **If the CLEC is found to be in violation of the local use restriction, the CLEC will pay: 1) all costs for the auditor and the ILEC personnel involved in the audit, 2) corrected billing back to date the circuit was established, 3) interest (penalty) on the amount of corrected billing, and 4) loss of commingling rights after three faulted audits**

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- At a minimum, any alterations of existing commingling restrictions must be conditioned on the following:
  - **The UNE loop portion of EELs provisioned on the Interoffice Facility (IOF) must satisfy specified local use restriction to qualify.**
  - **The commingled Interoffice facility must terminate in a CLEC collocation (one collocation required per LATA).**
  - DS3 UNE loops cannot be commingled with other traffic on an OCn Interoffice Facility.
  - Commingling of Voice Grade or DS0 UNE loops onto a mixed-use DS1 IOF would be permitted for all facilities that transition from UNE-P to UNE-L.
  - Using existing Special Access pricing zones, commingling of DS1 UNE Loops onto a mixed-use DS3 IOF would be allowed in Zones 2 & 3 only.

Appendix

Wholesale Product Pricing Comparison

State	Retail 1FB	Retail 1FR	Resale 1FB	Resale 1FR	UNE-P Zone 1	UNE-P Zone 2	UNE-P Zone 3	UBL
AZ	$44.81	$23.74	$38.15	$21.42	$12.54	$18.28	$39.88	$14.00
CO	$48.16	$25.69	$41.42	$22.82	$11.30	$17.70	$38.13	$15.85
IA	$35.46	$22.61	$28.47	$19.01	$16.66	$19.19	$30.82	$20.42
ID	$45.73	$28.59	$38.86	$23.10	$19.39	$27.59	$44.50	$16.47
MN	$52.48	$24.65	$44.17	$21.34	$11.13	$14.45	$16.31	$13.00
MT	$48.84	$26.33	$41.75	$22.55	$27.57	$28.20	$31.43	$23.72
ND	$45.09	$28.78	$39.26	$25.17	$18.88	$29.02	$60.54	$17.51
NE	$38.91	$28.57	$33.66	$24.97	$17.06	$33.03	$67.42	$17.79
NM	$49.27	$22.84	$43.25	$20.33	$19.20	$21.49	$26.85	$18.52
OR	$36.29	$22.30	$32.62	$20.35	$17.10	$28.41	$59.42	$15.36
SD	$51.96	$29.34	$45.13	$25.77	$20.07	$21.45	$26.75	$19.15
UT	$30.14	$25.00	$27.42	$22.74	$14.71	$17.65	$23.11	$13.03
WA	$35.66	$22.33	$31.41	$19.99	$8.97	$13.96	$18.88	$14.01
WY	$38.00	$34.19	$34.60	$33.63	$22.75	$36.07	$27.22	$27.10
Average	$42.91	$26.07	$37.16	$23.08	$16.95	$23.32	$36.52	$17.57

Wholesale Pricing Is Mandated And De-Averaged:

- State PUCs
- FCC (271)

Take Away: Recent Price Reductions On UNE-P and UBL Create Additional Margin Opportunity For CLECs.

National RBOC Exposure To UNE-P Migration

	State	2000 Pop.	UNE Rates	Retail revenue	Gross Margin	% Gross Margin	Cable Networks
1	California	33,871,648	$18.08	$29.81	$11.73	39%	
2	Texas	20,851,820	$19.83	$39.63	$19.80	50%	
3	New York	18,976,457	$17.56	$31.62	$14.06	44%	
4	Florida..	15,982,378	$21.35	$33.99	$12.64	37%	
5	Illinois	12,419,293	$18.04	$31.36	$13.32	42%	
6	Pennsylvania..	12,281,054	$19.43	$32.18	$12.75	40%	
7	Ohio	11,353,140	$15.14	$34.02	$18.88	55%	
8	Michigan	9,938,444	$16.19	$40.74	$24.55	60%	
9	New Jersey	8,414,350	$13.75	$28.04	$14.29	51%	
10	Georgia	8,186,453	$17.84	$40.44	$22.60	56%	
11	North Carolina..	8,049,313	$19.96	$36.18	$16.22	45%	
12	Virginia	7,078,515	$18.40	$33.21	$14.81	45%	
13	Massachusetts...	6,349,097	$20.48	$37.42	$16.94	45%	
14	Indiana..	6,080,485	$17.16	$32.41	$15.25	47%	

Take Away: Competitors Elect UNE-P Strategy In The Following Circumstances: (1) Large Population Markets, and (2) High Margin Markets, and (3) Where Cable Telephony Platform Is Not Currently In Place.

National RBOC Exposure To UNE-P Migration

	State	2000 Pop.	UNE Rates	Retail revenue	Gross Margin	% Gross Margin	Cable Networks
15	Washington	5,894,121	$19.07	$31.98	$12.91	40%	Seattle/Tacoma - ATT
16	Tennessee..	5,689,283	$19.34	$35.14	$15.80	45%	
17	Missouri	5,595,211	$20.58	$36.58	$16.00	44%	
18	Wisconsin	5,363,675	$20.65	$39.21	$18.56	47%	
19	Maryland.	5,296,486	$16.62	$37.07	$20.45	55%	
20	Arizona	5,130,632	$17.23	$32.74	$15.51	47%	Phoenix - Cox
21	Minnesota....	4,919,479	$15.72	$32.81	$17.09	52%	Minneapolis - ATT
22	Louisiana..	4,468,976	$21.14	$35.63	$14.49	41%	
23	Alabama	4,447,100	$23.63	$39.29	$15.66	40%	
24	Colorado..	4,301,261	$20.52	$34.48	$13.96	40%	Denver - ATT
25	Kentucky.	4,041,769	$20.19	$41.39	$21.20	51%	
26	South Carolina	4,012,012	$21.23	$38.02	$16.79	44%	
27	Oklahoma	3,450,654	$21.39	$31.96	$10.57	33%	
28	Oregon....	3,421,399	$19.98	$33.36	$13.38	40%	Portland - ATT
29	Connecticut.	3,405,565	$18.84	$33.74	$14.90	44%	
30	Iowa...	2,926,324	$19.67	$29.96	$10.29	34%	

Take Away: Competitors Elect UNE-P Strategy In The Following Circumstances: **(1)** Large Population Markets, and **(2)** High Margin Markets, and **(3)** Where Cable Telephony Platform Is Not Currently In Place.

National RBOC Exposure To UNE-P Migration

	State	2000 Pop.	UNE Rates	Retail revenue	Gross Margin	% Gross Margin	Cable Networks
31	Mississippi.	2,844,658	$25.17	$42.00	$16.83	40%	
32	Kansas	2,688,418	$18.41	$34.13	$15.72	46%	
33	Arkansas	2,673,400	$18.20	$51.63	$33.43	65%	
34	Utah.	2,233,169	$18.06	$30.59	$12.53	41%	Salt Lake - ATT
35	Nevada	1,998,257	$25.65	$30.55	$4.90	16%	
36	New Mexico	1,819,046	$21.59	$30.22	$8.63	29%	
37	West Virginia	1,808,344	$29.68	$49.57	$19.89	40%	
38	Nebraska	1,711,263	$36.18	$37.95	$1.77	5%	Omaha - Cox
39	Idaho.	1,293,953	$27.97	$34.04	$6.07	18%	
40	Maine..	1,274,923	$19.27	$36.92	$17.65	48%	
41	New Hampshire	1,235,786	$21.68	$34.43	$12.75	37%	
42	Rhode Island..	1,048,319	$21.01	$35.35	$14.34	41%	
43	Montana.	902,195	$28.12	$36.29	$8.17	23%	
44	Delaware.	783,600	$17.78	$31.86	$14.08	44%	
45	South Dakota	754,844	$24.49	$36.21	$11.72	32%	
46	North Dakota..	642,200	$23.70	$37.25	$13.55	36%	
47	Vermont	608,827	$18.94	$37.77	$18.83	50%	
48	District of Columbia	572,059	$15.86	$31.22	$15.36	49%	
49	Wyoming	493,782	$27.11	$42.66	$15.55	36%	

Take Away: **Competitors Elect UNE-P Strategy In The Following Circumstances: (1) Large Population Markets, and (2) High Margin Markets, and (3) Where Cable Telephony Platform Is Not Currently In Place.**

Qwest Trends
Local Competition

- In **Qwest today,** local **competition includes** CLECs, cable **companies** and **wireless** companies (see attached **pricing** plans)
- Migration **from retail to** wholesale **is** not one for **one**
- **For** UNE-P, **Qwest** anticipates **that** in 2003 UNE-P growth **predominately** in residential marketplace **as rates** continue to **decrease** due to **cost dockets**